

**Sacramento Metropolitan  
Cable  
Television  
Commission**

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June 6, 2002

**VIA ECFS**

Federal Communication Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**SUBJECT: NOTICE OF PROPOSED RULEMAKING -- CS DOCKET NO. 02-52  
State and Local Regulation of Cable Modem Service and Rights-of-  
Way.**

**UNIFORM AND UNIVERSAL SERVICE**

The FCC has asked how their cable modem service classification impacts franchising issues. It appears that the FCC decision that cable modem service is not a cable service opens the door for providers to discriminate where they provide cable modem services.

The Sacramento Metropolitan Cable TV Commission (Sacramento) raises to the Federal Communications Commission the question of the appropriate level of government that is responsible to ensure uniform and universal service requirements and to monitor any discriminatory practices by providers in deciding where they build or extend their networks or provide broadband services.

It is clear in Sacramento experience that the business of broadband deployment is based on the number of [potential] customers per mile of infrastructure built and the costs of building infrastructure vary greatly depending upon whether the construction is above or underground. The racial, economic and ethnic demographics of communities vary, but there are correlations of factors that make the business case contrary to public policy, the result of which is de facto or at least perceived discrimination and an expansion of the digital divide by certain communities or neighborhoods not being served.

In regards to cable television systems, Sacramento has required construction schedules and maps that consider socio, economic and ethnic demographics of communities in the build out of a system. Sacramento finds that it was using its regulatory authority appropriately to prevent redlining or cherry picking by incumbent cable operators of their service rollouts. These same rules were applied to competitive overbuilders as well. Now it is concerned that public policy for uniform and universal delivery of broadband services is being left in a void.

Does the FCC propose to assume that responsibility and to analyze and reconcile census tract data with provider expansion plans to ensure that the digital divide does not get wider? Does the FCC propose to allow providers to self regulate and how will the FCC adjudicate complaints of discriminatory practices occurring at the local level? If the FCC intends local franchising authorities to develop and implement policies on non-discriminatory offerings of broadband services, how should it fairly be paid for those activities?

#### RIGHTS-OF-WAY

The FCC states its concern “that State or local regulation beyond that necessary to manage rights-of-way could impede competition and impose unnecessary delays...”

Sacramento recruited and then granted access to its rights-of-way and public easements to a telecommunications overbuilder. Its experience is that there is an extreme need for protecting the public's welfare and safety from a range of construction related deficiencies including gross negligence and basic lack of concern because overbuilders often view their franchise as a 'right' to intrude unfettered on private property easements. Should the FCC move to further impede local authority over rights-of-way and easements for the purposes of removing unnecessary delays, it should be prepared to respond to irate property owners about cracked sidewalks, broken water, sewer and gas lines, open trenches, damaged fences and landscaping and escaped dogs. Sacramento offers that in considering the industry's request to limit local authority over the rights-of-way, the FCC is beyond being naïve. Approximately one-half of Sacramento's public utility easements are in tree-lined, backyard fencelines with no alleyways. It would be very unwise, if not foolish, for the FCC to contemplate that it can manage access to those backyards or that the cable broadband industry can be trusted to do so with the adequate concern for the safety and damage to people and property.

Sacramento's experience is that local governments have an important oversight and mediator role in the deployment of broadband and left alone in the rights-of-way, cable companies will do more to harm the deployment of broadband by exercising their same monopolistic, style of customer service for which they are so well-known.

## CUSTOMER SERVICE

Since the FCC's recent determination regarding cable modem service that is the subject of this NPRM, AT&T Broadband, at least in Sacramento, has refused this jurisdiction's customer service authority over cable modem services. Sacramento's experience is that on a complaint per thousand customers ratio, cable modem calls exceed those of cable video subscribers. Setting aside that the recently reported American Customer Satisfaction Index (Wall Street Journal May 23, 2002) cited AT&T, Comcast and Charter as among the worst-rated businesses, how does the FCC intend billing disputes for cable modem services to be resolved? To assume that customers will not be confused and frustrated because (their cable modem service uses the cable wire and is billed on the cable bill) their franchising authority cannot help in resolving a billing problem.

Sacramento as a courtesy is referring initial cable modem complaints to AT&T. Unresolved complaints are referred to the FCC and Senators Feinstein and Boxer.

Respectfully Submitted,

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